

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HENRY L. BARTON, JR.,

1

Plaintiff,

2:11-cv-2098-JCM-RJJ

vs.

FREMONT STREET EXPERIENCE,

ORDER

Defendant.

2

This matter is before the Court on the failure of the Plaintiff, Herman L. Barton to appear at the Show Cause hearing scheduled for October 4, 2012. The Court having reviewed this matter hereby makes the following findings:

1. On August 8, 2012, the Court entered an Order (#10) scheduling a status hearing for September 7, 2012. The Order (#10) required Plaintiff, Henry L. Barton, Jr., to be present in Court for this hearing. The Order (#10) was served on the Plaintiff by United States Postal Service Certified Mail. *See*, Certified Mail Return Receipt (#11).
2. Plaintiff, Henry L. Barton, Jr. did not appear at said hearing. Further, he did not request a continuance of the hearing nor did he provide a reason for his non-appearance.
3. On September 13, 2012, the Court issued an Order to Show Cause (#13) scheduling a Show Cause hearing for October 4, 2012. The Show Cause Order(#13) required Plaintiff, Henry L. Barton, Jr., to be present in Court for this hearing. The Order (#13) was served on the Plaintiff by United States Postal Service Certified Mail. *See*, Certified Mail Return Receipt (#14).

1 4. Plaintiff, Henry L. Barton, Jr. did not appear at the Show Cause hearing. Further,
2 he did not request a continuance of the hearing nor did he provide a reason for his
3 non-appearance.

4 5. The certified mail was returned to the court as undeliverable on both occasions.
5 *See, Certified Mail Returns (#12, #15 & #16).*

6 6. Plaintiff, Henry L. Barton, Jr., has failed to comply with the rules of this court in
7 that he has failed to keep the court apprised of his current address.

8 7. Plaintiff, Herman L. Barton, Jr., has failed to prosecute this case.

9 **RECOMMENDATION**

10 Based on the foregoing and good cause appearing therefore,

11 IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that this case be
12 **DISMISSED WITH PREJUDICE.**

13 **NOTICE**

14 Pursuant to Local Rule IB 3-2 [former LR 510-2] any objection to this Report and
15 Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14)
16 days after service of this Notice. The Supreme Court has held that the courts of appeal may
17 determine that an appeal has been waived due to the failure to file objections within the specified
18 time. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This Circuit has
19 also held that (1) failure to file objections within the specified time and (2) failure to properly
20 address and brief the objectionable issues waives the right to appeal the District Court's order
21 and/or appeal factual issues from the order of the District Court. Martinez v. Ylst, 951 F.2d 1153
22 (9th Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

23 DATED this 24th day of October, 2012.

24
25
26 
27 ROBERT J. JOHNSTON
28 United States Magistrate Judge